

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

BUESCHER MEMORIAL HOME, INC., et al.,

Respondents,

v.

MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS,

Appellant.

DOCKET NUMBER WD75907

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: November 5, 2013

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Byron L. Kinder, Judge

APPELLATE JUDGES

Division Two: Mark D. Pfeiffer, Presiding Judge, and Joseph M. Ellis and
Victor C. Howard, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

BUESCHER MEMORIAL HOME, INC.,)
et al.,)

Respondents,)

v.)

MISSOURI STATE BOARD OF)
EMBALMERS AND FUNERAL)
DIRECTORS,)

Appellant.)

OPINION FILED:
November 5, 2013

WD75907

Cole County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Joseph M. Ellis and Victor C. Howard, Judges

The Missouri State Board of Embalmers and Funeral Directors (“the Board”) appeals from the Judgment of the Circuit Court of Cole County, Missouri (“circuit court”), reversing the Board’s discipline of the licenses of Barbara Buescher and Buescher Memorial Home (collectively, “Licensees”) after a finding by the Administrative Hearing Commission of over 120 causes to discipline, including incompetence, gross negligence, violations of professional trust and confidence, monetary misconduct, and a complete disregard and refusal to cooperate with the investigative process by the Board’s investigators. The circuit court remanded the matter to the Board for a new hearing on the issue of what discipline, if any, the Board may exercise with regard to the discipline of Licensees’ licenses.

In this case, the point of disagreement is not whether grounds existed to discipline Licensees’ licenses; but instead, whether Licensees produced clear and convincing additional evidence, pursuant to section 536.140, to the circuit court of a violation of Licensees’ due process right to a fair disciplinary hearing sufficient to overcome the strong presumption in favor of the validity of the administrative determination.

REVERSED.

Division Two holds:

The circuit court abused its discretion in finding that Licensees' due process rights were violated:

1. The dispositive issue in this case is the correctness of the circuit court's judgment concluding that the Board's decision was unconstitutional and unfair because of the presence or participation of two Board members who were allegedly biased, thereby creating "the appearance of impropriety and actual impropriety as to the disciplinary process." Administrative tribunals acting in a quasi-judicial capacity must be free of "actual bias or the probability of bias," but such quasi-judicial administrative tribunals are *not* subject to due process claims of unfairness merely on the basis of an alleged "appearance of impropriety."

2. Licensees offered no clear and convincing evidence to overcome the strong presumption that the Board adjudicated the matter fairly. The circuit court erred in applying a "more likely than not" burden of proof to proceedings that demanded "clear and convincing" proof of administrative agency bias or probability of bias.

Opinion by: Mark D. Pfeiffer, Judge

November 5, 2013

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